IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b)

Description of Case.

W.P. No. 1377 (S/S) of 2006

Date of decision :- 08-11-2006

~~**A.F.R. (Approved for reporting)**~~

Not approved for reporting

Date :- 08-11-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 1377 (S/S) of 2006

Sohan Singh Panwar
S/o Late Jeet Singh Panwar
R/o Village and P.O.- Masood, Patti-Chalansyun
Tehsil and District- Pauri Garhwal ...Petitioner

Versus

1. State of Uttaranchal through Collector Pauri Garhwal

2. District Panchayat Raj Officer, Pauri Garhwal

3. Deputy Commissioner Panchayat ...Respondents

Sri Ashok Bisht, learned counsel for the petitioner.
Sri N.P. Shah, learned standing counsel for the respondents/State

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioners have sought the following reliefs: -

i) To issue writ, order, rule or direction, in the nature of certiorari calling for records and to quash the impugned order dated 28.10.2006(Annexure No.2).

ii) To issue write, order, rule or direction, in the nature of mandamus directing the respondents to not to interfere in the peaceful functioning of the petitioner as Gram Panchayat Vikas Adhikari.

iii) Any order, rule or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iv) To award the cost to the petitioner.

2. The petitioner had been working as Gram Panchayat Vikas Adhikari in District Pauri Garhwal. He had further pleaded that in January, 2005 a local M.L.A. and Chairman Garhwal Mandal Vikas Nigam (hereinafter referred as GMVN), Shri Ganesh Prasad Godiyal came to the office of the petitioner and asked him to issue new B.P.L. ration card to

some of his person. The petitioner expressed his inability to do so as desired by the M.L.A. and Chairman, GMVN. The M.L.A. went furious and took away forcibly the shop register and other papers pertaining to fair price shop from the petitioner's custody. The petitioner informed this fact to his seniors and they have assured him that the document would be returned to him very soon. It was further pleaded that in the month of August, 2006 a letter was issued to the petitioner whereby the petitioner came to know that enquiry would be conducted against him by the Deputy Commissioner (Panchayat) for the irregularities made in the complaint. The preliminary enquiry was completed and thereafter, the impugned suspension order was passed. The suspension order had been challenged on the ground that the impugned order is violative of proviso 1 to Rule 4 (1) and 7 of Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003. the second ground for the challenge of the impugned order is that no additional ration cards had ever been issued to any person by the petitioner and the allegations made against the petitioner were wrong. It was further pleaded that the impugned order is the result of malice by M.L.A. and Chairman of GMVN.

3. Heard Sri Ashok Bisht, learned counsel for the petitioner; Sri N.P.Shah, learned standing counsel for the respondents/State and perused the record.

4. Learned counsel for the petitioner contended that the petitioner had not committed any irregularities or he had not cancelled the cards already issued to any of the B.P.L. holders. He further contended that no fresh B.P.L. ration cards had been issued by him. It was further contended that

the impugned order has been passed without any basis. Learned standing counsel refuted the contentions. It is well settled principle of law that High court while exercising the power of judicial review under Article 226 of the Constitution of India, does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct the errors of law or procedural error or violation of principles of natural justice. The judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that individual receives fair treatment and not to correct the errors. The court may interfere where authority had violated the statutory rules in a manner inconsistent with the principles of natural justice.

5. It is well settled position of law that when the appointing authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into of investigated and the nature of the evidence placed before the appointing authority and on application of the mind by appointing authority. It has been held by the Apex Court in **State of Orissa Vs. Bimal Kumar Mohanty (1994) 4 SCC p/126]** that when there is an accusation of defalcation, the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Where the charges are baseless, malicious or vindictive and are framed only to keep the

individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence the Hon'ble Court has observed that it is always advisable to allow disciplinary proceedings to continue unhindered. Thus it is evident that this court would not examine the factual aspect as to whether there was any irregularity or not. Whether the preliminary report submitted by the Deputy Commissioner (Panchayat) was correct or not. It is a matter of enquiry. The enquiry officer will come to the conclusion with regard to the charges made against the delinquent official.

6. It is also pertinent to mention here that the petitioner had himself stated in his petition that the petitioner had marked in shop register only a few names for his own reference according to his senior's orders. Thus the petitioner had made the admission to some extent in para 'D' of his ground of attack. Thus this Court in not competent to assess that the material was sufficient to suspend the petitioner or not.

7. It was further contended that the impugned order is violative of proviso 1 to Rule 4 of Uttaranchal Government Servant (Disciple and Appeal) Rules, 2003. Proviso 1 to Rule 4 provides as under:

> ***"4 Suspension. –(1)*** *A Government Servant against whose conduct an inquiry in comtemplated, or is proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the Appointing Authority:*
>
> *Provided that suspension should not be resorted to unless the allegations against the Government Servant*

are so serious that in the event of their being established may ordinarily warrant major penalty:

Provided further that concerned Head of the Department empowered by the Governor by an order in his behalf may place a Government Servant or class of Government Servants belonging to Group 'A' and 'B' posts under suspension under this Rule:

Provided also that in the case of any Government Servant or class of Government Servants belonging to Group 'C' and 'D' posts. The Appointing Authority may delegate its power under this Rule to the next lower authority."

8. Perusal of the aforesaid Rule shows that the suspension should not be resorted to unless the allegations against the Government servant are so serious that in the event of their being established may ordinarily warrant major penalty. In the case in hand, there was a complaint against the petitioner that he had made certain irregularities in the register as had been indicated in the suspension order. If it is proved that the person whose name had been deleted or cancelled were eligible for the B.P.L. card, definitely it would warrant major penalty in the said case. The averment made in the suspension order clearly reveals that the misconduct which has been indicated is of serious nature. So, there is no violation of Rule 4 while passing the impugned order. The argument advanced by the learned counsel for the petitioner had no force.

9. Learned counsel for the petitioner further contended that the suspension order is the result of malafide. It was further contended that the enquiry against the petitioner was highly malafide and prejudice as it has been initiated under the high political influence of the local M.L.A. and Chairman of

GMVN. It is true that the enquiry had been initiated on the complaint of said persons but the petitioner had not been suspended only on the ground of mere complaint of the persons indicated in the petition. The Government had conducted the preliminary enquiry through senior officer having the rank of Deputy Commissioner (Panchayat) and he had found the petitioner guilty and thereupon the said suspension order has been passed. Thus, it cannot be said that the suspension order had been passed only on the mere complaint of the local M.L.A. and Chairman of GMVN. It is pertinent to mention here that the petitioner had averred in his petition itself that local M.L.A. and Chairman of GMVN wanted to issue certain cards to non-eligible persons but names of those persons have not been disclosed either in the petition or before authority till today. Learned counsel for the petitioner could not demonstrate the names of such persons from which the local M.L.A. and the Chairman of GMVN pressed the petitioner to make the B.P.L. cards for the non-eligible persons. The learned counsel for the petitioner could not demonstrate the name in any of the document which has been submitted either to the higher officials or before the Court.

10. In view of the above, it cannot be said that there is any malafide while passing the impugned order. As such, the suspension order did not require any interference.

11. In view of the foregoing discussion, the writ petition devoids of merit is liable to be dismissed and is dismissed accordingly. The parties shall bear their own costs.

12. However, it is made clear that the preliminary enquiry has been made by the Deputy Commissioner (Panchayat), it would be just and proper that any higher officer in rank than the Deputy Commissioner should be appointed as Enquiry Officer in this matter. The respondents would appoint any senior officer within seven day's after receipt of the certified copy of this order and the enquiry would be concluded by him within a period of four months thereafter.

13. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S.Rawat, J.)

8th November, 2006
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